**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
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| Telephone Number Portability | ) | CC Docket No. 95-116 |
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# COMMENTS OF GVNW CONSULTING, INC. ON THE PETITION FOR DECLARATORY RULING OF THE CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION (CTIA)


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## SUMMARY OF COMMENTS

A significant number of issues remain to be addressed by the Commission if wireless number portability is to be successfully implemented.

Because of the rate center disparity between wireless and wireline carriers, imposing intermodal LNP at this time is problematic, especially in rural areas. Allowing intermodal number portability, prior to resolving legitimate operational and competitive neutrality issues, would only exacerbate an already confusing situation. Additionally, many of the same issues apply in intramodal wireless number portability situations between rural wireless carriers and urban carriers with much larger coverage areas.

Since NXXs cannot be ported across rate center boundaries, numbers from a small ILEC would not be portable between the ILEC's rate center and a separate wireline rate center, but could technically be made portable between the wireline carrier's rate center and a wireless carrier outside that rate center if the wireline and wireless carriers service areas overlap.

If wireline to wireless porting is allowed, but wireless to wireline porting is not except from the wireless rate center(s) that matches the wireline rate center, then intermodal portability becomes de-facto one-way portability from wireline to wireless for all wireline rate centers where the wireless carrier has not established its own wireless rate center and NXX. Wireline carriers in the other, smaller rate centers face one-way portability that allows customers to leave them while retaining their number, but does not allow them to obtain customers from the wireless carriers in a similar manner.

The cost to equip switches and pay ongoing LNP fees to the LNP database operators is significant for small rural wireline and wireless carriers. Because they have not received a bona fide request for LNP, many small carriers have not incurred these costs due to lack of demand for the service, and they should not be required to do so absent a genuine need.

In CTIA's view, albeit a self-serving one, CMRS rules overrule all other rules. If this had been the intent of the Telecommunications Act of 1996 (TA 96), this would have been included as part of the text of that law. Stated simply, CTIA is confused as to the "A's" and "B's" of telecommunications law. CTIA seeks to ignore the language in section 251(a) that applies to all carriers, and focus its objections to section 251(b) related to local exchange carriers. While a clever argument, it does not comport with the proper definitional parameters.

Nearly seven years ago, in the opening paragraphs of the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (FCC 96-286), it was clearly delineated that CMRS falls under the auspices of Section 251(a). Quoting from paragraph 8 of that order*: Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act.* Implicit within the section 251(a) general duties of telecommunications carriers is the concept of an interconnection arrangement.

Rural wireless carriers may be placed at a similar cost and competitive disadvantage as rural wireline carriers by wireless number portability rules. The Commission should address those issues prior to implementation of wireless number portability.

## Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, access charge reform, and Local Number Portability (LNP) for communications carriers in rural America. We are pleased that the Commission has requested comments and replies on the issues raised by the CTIA petition.

The purpose of these comments is to respond to the Commission's Public Notice (DA 03-1753) dated May 22, 2003, seeking comments and replies responding to the CTIA petition dated May 13, 2003. CTIA has requested the Commission clarify carrier obligations with respect to a number of Local Number Portability (LNP) implementation issues. CTIA has asserted that there are a number of outstanding issues that cannot be resolved without specific direction from the Commission. GVNW agrees with CTIA on that point, but disagrees with CTIA on a number of its other conclusions.

We will address separately two "rural" viewpoints in these comments. First, there are a number of issues that impact rural wireline carriers that have been ignored or glossed over in the CTIA petition. Second, we will place in the record some concerns of small rural wireless carriers that appear to be omitted from CTIA's pleading.

# SECTION 1 - RURAL WIRELINE ISSUES

CTIA Appears To Assume Away Legitimate Regulatory Issues

CTIA attempts to assume away the different operating circumstances between wireline and wireless carriers, as wireline carriers operate under a different regulatory scheme. This is especially true for the rural ILECs that are GVNW's clients. The issue here is what is perceived by the customer as "local calling area". In most urban/rural scenarios, rural communities have a substantial community of interest with an urban area, which is often the commercial and cultural hub of a given geographic area. Customers in the urban area, who do not have significant reasons to call the small surrounding rural communities, seldom reciprocate this interest. Wireline local calling areas are usually determined by state regulators, and must therefore take into account the wishes of all customers. There may be significant pressure by urban customers not to expand local calling areas if this would mean an increase in local rates, as such expansion does not offer a "perceived benefit" to the urban customer.

In addition, the urban area is often served by a different ILEC than the rural area. The urban ILEC has no incentive to expand local calling areas, and may actively oppose such expansion. This leaves the rural ILEC with a small local calling area with all other calls being toll calls billed on a per-minute basis. The wireless carrier, regulated by the FCC, is under no similar constraints, and can offer large calling areas that are perceived as local by customers, using block of time pricing.[1] The small ILECs, however, regulated

[1] Customers are increasingly favoring block-of-time pricing over usage-sensitive pricing for calling. For example, "California to Canada" calling plans for about $40.00 per month for 500 to 1,000 minutes are quite popular with wireless customers in the Northwest.

by state commissions that govern local calling areas, cannot currently offer such competing plans.

Rate Center issues CANNOT be ignored

In reviewing the issue of local number portability, it is worth noting that similar to the public record in the Commission's proceedings on universal service, rural is different. In rural areas, each town is typically a separate exchange and rate center. Since NXXs cannot be ported across rate center boundaries [2], numbers from a small ILEC would not be portable between the ILEC's rate center and a separate wireline rate center, but could technically be made portable between the wireline carrier's rate center and a wireless carrier if the wireline and wireless carriers service areas overlap.

This can be very confusing to customers. In order to clarify the reason for our concern on this issue, we provide some discrete examples. For example, in the Portland, Oregon metropolitan area, both Oregon City, served by Qwest, and Canby, served by Canby Telephone Association, a rural ILEC, are included in the Portland Extended Area Service local calling area per rulings of the Oregon Public Utility Commission. However, both localities are separate exchanges and rate centers from Portland. Wireline numbers from Oregon City and Canby cannot be ported to Portland on a wireline-wireline basis, but could in practice be ported to Portland on a wireline-wireless basis.

However, it is unclear how, or even if, wireless numbers from NXXs in the wireless carriers' Portland rate center could be ported to the Oregon City or Canby wireline rate centers. If a wireless customer having a Portland rate center wireless NXX

[2] NANC LNPA Working Group – Wireline - Wireless Service Provider Portability "Rate Center Discussion", February 27, 1998, Section 1.9, and NANC LNP Architecture and Administrative Plan –

ports to Oregon City, this will place a Portland NXX in the Oregon City wireline rate center, which is not allowed under current operating procedures.[3] Thus, if wireline to wireless porting is allowed, but wireless to wireline porting is not except from the wireless rate center(s) that matches the wireline rate center, then intermodal portability becomes de-facto one-way portability from wireline to wireless for all wireline rate centers where the wireless carrier has not established its own wireless rate center and NXX. Again using Portland, Oregon as an example, there are 37 rate centers in the Portland local calling area, including the Portland rate center. However, most wireless carries have established their rate center in only the Portland rate center, and perhaps several other large suburban rate centers. Wireline carriers in the other, smaller rate centers face one-way portability that allows customers to leave them while retaining their number, but does not allow them to obtain customers from the wireless carriers in a similar manner.

Intermodal portability will cause substantial customer confusion, and will provide an impetus to customers to choose wireless service. This situation is neither technologically nor competitively neutral.

Multiple MSA locational issues

Another situation that will cause even more confusion arises when a wireline carrier straddles two or more MSAs. One such example is the Monitor Cooperative Telephone Company (Monitor) headquartered in Monitor, OR. Monitor is a small rural wireline exchange that is situated partly in the Portland, OR MSA, and partly in the

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Section 7.3. This would be LOCATION Portability, for which technical specifications have not yet been developed, and not LOCAL Number Portability.

[3] Ibid.

Salem, OR MSA, but has local calling to neither Portland nor Salem. Monitor has no direct Wireline to Wireless connections, but connects indirectly through Qwest Communications. A number ported from a Monitor service could be ported to either a Portland or Salem wireless carrier. In this case, calls from wireline customers with numbers in the Monitor NXX to wireless customers with numbers in that NXX that had been ported to Portland or Salem will be routed over toll facilities to those rate centers, and the customer will be charged a toll charge for a call to their neighbor across the road with the same prefix. Similar calls from wireless to wireline may or may not be charged a toll charge, depending on the wireless customers' service plan. Customer confusion will be significant.

There are currently no rules or specifications to deal with this disparity. Until such time as the FCC promulgates rules, and the appropriate standards bodies create technical and operational specifications, intermodal porting of numbers should be delayed.

Public safety issues cannot be ignored

It is unclear whether all E911 Public Safety Answering Points (PSAPs) can deal with NXXs split between wireless and wireline carriers. Currently, public safety agencies determine the physical location of wireline customers from entries in the Automatic Location Identification (ALI) database. Since physical location of wireline customers does not change, the ALI database is updated only when adds, moves, or a change by the customer requires this. Information is input by the ILEC as part of its service order process on a periodic (usually less than 24 hour) basis.

On the other hand, since the location of wireless customer can and does change, location information is provided with each call by the wireless carrier from location information determined for that call origination. This must be done on a per-call, real-time basis to ensure accuracy for proper emergency response. The mechanisms are quite different. To assure accuracy, there is an edit process in place at most ILECs and Public Safety agencies to assure that information placed in the ALI and received by the PSAP is correct. This edit process may include an edit that deals with NXXs and the source of location data assigned in that NXX.

In order to prevent false rejections on edit, incorrect customer location data, and costly, potentially life-threatening incorrect emergency dispatches, it must be ascertained that **all** ALI and PSAP equipment can deal with location information within a single NXX where some of the numbers will follow the wireline format, and some the wireless format. It is not at all clear that this is currently the case. Until such information has been verified, the FCC must postpone intermodal number portability in the interest of public safety.

The Bona Fide Request Process must continue

The issue raised by CTIA in its filing at Page 31 that a Bona Fide Request (BFR) not be required for implementation of Local Number Portability, and that all carriers should be ready to implement LNP at the date of the FCC required implementation, will cause undue economic burdens to be placed on rural wireline and wireless subscribers. As discussed on page 7 (and footnote 2 and 3) above, NXXs and numbers in them are not portable across rate center boundaries. Because of this, and the low incidence of

competitive carriers that operate in rural areas, there have been few requests for LNP in rural areas.

The cost to equip switches and pay ongoing LNP fees to the LNP database operators is significant for small rural wireline and wireless carriers. Because they have not received a bona fide request for LNP, many small carriers have not incurred these costs due to a lack of demand for the service. Requiring carriers to implement a costly feature without demand for the service as evidenced by a bona fide request for implementation of the service on a given date will require expensive upgrades[4] where no one uses the service, and where the customers do not receive the benefits of competition. Such an order would be burdensome to these customers.[5]

Interconnection Agreements are integral to an equitable process

CTIA states in its filing (Page 16) that number portability should be required without the benefit of an interconnection agreement that spells out terms and conditions. The crux of their flawed argument is that CMRS interconnection is governed solely by Section 332. In CTIA's view, albeit a self-serving one, CMRS rules overrule all other rules. If this had been the intent of TA 96, this would have been included as part of the text of that law. Stated simply, CTIA is confused as to the "A's" and "B's" of TA 96 telecommunications law. CTIA seeks to ignore the language in section 251(a) that

[4] For example, the LNP feature set costs on the order of $3.00 to $4.00 per customer in the Nortel DMS 10, the switch most commonly deployed by rural wireline carriers.

[5] There is currently an incentive for carriers to issue BFRs with a request for service "at a future date" that is not specified, or to blanket all carriers with BFRs, whether the requesting carrier actually offers service (can provide dial tone) in the area in question or not. The FCC should require that all requests have a date certain for implementation of LNP specified for the request to be considered a bona fide request per TA 96. To discourage spurious requests, the FCC may want to consider penalties for missing committed service dates be applied to requesters, as is currently the case for non-complying parties that receive requests.

applies to all telecommunications carriers, and focus its objections to section 251(b) related to local exchange carriers. While a clever argument, it does not comport with the proper definitional parameters.

Nearly seven years ago, in the opening paragraphs of the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (FCC 96-286), it was clearly delineated that CMRS falls under the auspices of Section 251(a). Quoting from paragraph 8 of that order:

> *Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act.*

Implicit within the section 251(a) general duties of telecommunications carriers is the concept of an interconnection arrangement. Requiring any party to provide a service without a contract is tantamount to forcing that party to provide service at terms and conditions dictated by the other party. This is not a trivial issue. In some cases where the ILEC has been able to measure terminating access by carrier, it is often found that 20 percent of the terminating access minutes are from wireless carriers that are not paying the ILEC for terminating access. Such actions cause ILEC revenue requirement shortfalls, a confiscation of ILEC property, and add to the costs paid by carriers that do play by the rules, and ultimately by end users. Such action provides an unfairly acquired competitive advantage for wireless carriers, and creates cost shifting from wireless to wireline customers.

Interconnection agreements are needed to prevent such abuses. In many instances, when confronted with this evidence, and a request by the rural ILEC to enter into an interconnection agreement to deal with this issue, wireless carriers have been less

than eager to enter into agreements. In many cases, the current lack of interconnection agreements is not based on lack of any action by the rural ILEC in this area, but a desire by some wireless carriers to avoid paying access charges they are legally obligated to pay.

## SECTION 2 - RURAL WIRELESS ISSUES

CTIA appears to be at least marginally aware of the legitimate concerns of various rural wireless carriers in the statement at page 4 of its petition:

> The Commission too has yet to clarify the obligations of some rural wireless carriers to participate in number portability and has been presented several requests by other carriers that threaten to break ubiquitous nationwide roaming.

In its comments filed March 13, 2003, a rural wireless carrier[6] stated in part:

> Just as in the case of wireline-to-wireless local number portability, the only obligations imposed on [CMRS] carriers are to provide WLNP where both carriers have numbering resources within the same rate center and interconnection facilities which would allow a call from a non-ported caller to a number ported from the original CMRS carrier, to be able to be routed and rated as a local call.

This recognition of the scope of what is required, as opposed to what is on CTIA's wish list, leads us to three additional rural wireless concerns.

Number Portability will competitively disadvantage rural wireless carriers

Rural wireless carriers will be harmed competitively if the size of their licensed area relative to larger wireless carriers is ignored. In much the same way as rural ILECs will be harmed by the rate center disparity with wireless carriers (see above), a rural wireless carrier with a small license area subtending a much larger license area of an

[6] See Rate Center Petition, Reply Comments of Mid-Missouri Cellular at 1-2.

MTA license holder can be put at a competitive disadvantage through one-way porting. This can occur when the smaller rural wireless carrier has numbers rated in the smaller carrier's territory, and the larger carrier has none, thus allowing the large carrier to port numbers while the rural carrier cannot.

Porting Intervals can vary between large and small wireless carriers

The request in the CTIA petition (at page 15) that the FCC resolve the porting interval issue by requiring all carriers to port on intervals that appear to be best suited to the large wireless carriers ignores the needs of rural wireless carriers. This overtly inflexible position does not take into account the operating procedures of other carriers. Different carriers have different intervals for a variety of reasons. If the FCC chooses to resolve the porting interval issue by an order, this order must go through a public comment process so that the concerns of all parties can be considered. To order a 2 ½ hour porting interval on a small carrier that utilizes paper records would require expensive upgrades to operating procedures, requirement for additional staff, and additional costs passed on to customers.

Porting/Transport Costs should be assessed to the Carrier where the call is ported

In order to provide a competitively neutral wireless market for LNP, the costs associated with both porting and transport should be borne by the carrier that is receiving the ported number.

This will prevent the small rural wireless carrier from bearing an unfair percentage of porting and transport costs that are more properly borne by the large urban wireless carrier, and deter spurious requests for LNP where the requesting party does not actually offer service in the geographic area.

## Conclusion

Despite congressional pressure to act, the Commission should heed the warning that a macro-only view of intra and inter-modal wireless number portability serves to ignore some of the important micro implementation issues that significantly impact rural providers of local number portability.

Respectfully submitted,

electronically submitted through ECFS

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